

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEVEARN SIMMONS,

Defendant-Appellant

UNPUBLISHED
February 28, 2012

No. 301498
Wayne Circuit Court
LC No. 10-000620-FC

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

PER CURIAM.

Defendant appeals her conviction by jury of involuntary manslaughter, MCL 750.321. The trial court sentenced her to 3 to 15 years' imprisonment. We affirm.

This case arises from a beating inflicted upon Michelle Kusnierz by defendant, which resulted in the victim's death 18 hours later. Sometime before the incident, Kusnierz stole a van belonging to defendant's brother. Kusnierz, a drug addict, had apparently stolen the van to rent to drug dealers in exchange for drugs. On the evening of the incident, defendant heard from a friend that Kusnierz was on Annabelle Street in Detroit. Defendant went to the street and hid behind her car while defendant's boyfriend lured Kusnierz closer. As Kusnierz approached the vehicle, defendant jumped out and attacked her. Kusnierz initially fought back, but ultimately defendant pinned her to the ground and struck her repeatedly in the head. Police arrived and treated the incident as a cross-complaint for assault and battery. Police drove Kusnierz to a friend's house. There, Kusnierz went to sleep and was discovered dead by her friend the following afternoon.

Defendant argues that the prosecution introduced insufficient evidence that she caused the death of Kusnierz. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Meissner*, ___ Mich App ___, ___ NW2d ___ (Docket No. 298780, issued October 25, 2011), slip op at 7, *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

A killing done without malice is manslaughter. *People v Mendoza*, 468 Mich 527, 534-535; 664 NW2d 685 (2003). Involuntary manslaughter is a “catch-all crime . . . characterized in terms of what it is *not*, and ascertaining whether a homicide is involuntary manslaughter requires essentially questioning first whether it is murder, voluntary manslaughter, or a justified or excused homicide. If it is none of those, then the homicide, generally, is involuntary manslaughter.” *People v Holtschlag*, 471 Mich 1, 7; 684 NW2d 730 (2004). In this case, the prosecution advanced an involuntary manslaughter theory in which Kusnierz died as a result of injuries suffered as a consequence of an assault and battery committed by defendant. A defendant’s actions need not be *the* sole cause of death in an involuntary manslaughter case, provided that the defendant’s actions were *a* cause of death. *People v Tims*, 449 Mich 83, 96; 534 NW2d 675 (1995). Even “joint equal causes do not excuse culpable behavior.” *Id.* at 97.

Here, there is sufficient evidence in the record for a reasonable jury to conclude that defendant was a cause of Kusnierz’s death. Approximately 18 hours before her friend, Bruce Ealey, found her dead, Kusnierz was in a physical altercation with defendant. Nathaniel Johnson, defendant’s boyfriend’s cousin, testified that defendant positioned herself on top of Kusnierz, grabbed her head, and began “banging it on the ground.” Johnson also testified that defendant struck Kusnierz in the head by “clenching both fists and beating them up and down as if on a drum.” When she met Ealey at his house following the altercation, Kusnierz told Ealey that she had been beaten and that she had a headache. Defendant admitted in a Facebook posting that she had attacked and beaten Kusnierz.

Wayne County Chief Medical Examiner Dr. Carl Schmidt testified that during the autopsy he discovered hemorrhaging in Kusnierz’s brain, and that hemorrhaging caused swelling, also called edema. When the brain swelled, Dr. Schmidt testified, it exerted pressure on surrounding tissue, including nerves controlling Kusnierz’s breathing and respiration. This pressure caused her heart and lungs to stop working. Accordingly, Dr. Schmidt testified that the cause of death was cerebral edema due to blunt trauma, and that the manner of death was homicide. Dr. Schmidt found that, although he could not pinpoint an exact time, the fatal blows occurred within about 24 hours of the autopsy. Dr. Schmidt’s testimony, combined with the testimony of the lay witnesses to the assault and battery, when viewed in the light most favorable to the prosecution, justifies a rational jury’s finding that defendant caused Kusnierz’s death.

In support of an alternate theory of death, defendant called Dr. Lujbisa Dragovic, Chief Forensic Pathologist and Chief Medical Examiner for Oakland County, who testified that Kusnierz died from an overdose of the antidepressant Doxepin, and that Doxepin overdose must have been the sole cause of death because “one mechanism [of death] excludes the other.” Dr. Dragovic testified that Dr. Schmidt failed to consider Doxepin as a possible cause of death because Dr. Schmidt did not see toxicology results until six weeks after he issued his autopsy report. However, the credibility of evidence and witnesses is for the trier of fact alone to decide. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). That the jury believed Dr. Schmidt and not Dr. Dragovic is not sufficient to sustain a claim of insufficient evidence. Indeed, even if the jury had accepted that Doxepin overdose was also a cause of death in this case it would not have been unreasonable to convict, because the jury needed only to find beyond a reasonable doubt that blunt trauma resulting from an assault and battery was a cause of death, not the cause of death. *Tims*, 449 Mich at 96.

Affirmed.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Jane E. Markey